**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| ANWAR, et al.,<br><br>Plaintiffs,<br><br>- against –<br><br>FAIRFIELD GREENWICH LIMITED, et al.,<br><br>Defendants. | Consolidated Case<br>Docket No. 09 CV 00118 (VM) |

# REPLY MEMORANDUM OF LAW OF THE KNIGHT SERVICES HOLDINGS LIMITED AND THE AMERICAS/SWISSCO. TRUSTS IN SUPPORT OF THE ANWAR PLAINTIFFS' MOTION TO BE APPOINTED LEAD PLAINTIFF AND IN OPPOSITION TO THE FAIRFIELD INVESTOR GROUP'S MOTION TO BE APPOINTED LEAD PLAINTIFF OVER THE FEDERAL SECURITIES LAW CLAIMS

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## INTRODUCTION

The Knight Services Holdings Limited and the Americas/SwissCo. Trusts ("Movants") submit this reply memorandum of law in support of the Anwar Plaintiffs' motion for appointment as lead plaintiff in the above-captioned litigation, approval of the Anwar Plaintiffs' selection of lead counsel, and in opposition to the Fairfield Investor Group's competing application.

On May 11, 2009, Movants, the Anwar Plaintiffs, and the Fairfield Investor Group separately moved to be appointed lead plaintiffs pursuant to the procedures set forth in section 21D of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). On May 29, 2009, each movant submitted a memorandum of law in opposition to the competing motions.

After reviewing the briefs submitted by the Anwar Plaintiffs and following discussions with their counsel, Movants now are satisfied that the Anwar Plaintiffs are best positioned to represent the interests of the Class and will vigorously prosecute the Section 10(b) and 20(a) claims. Among other things, Movants now believe that the Anwar Plaintiffs more than meet the requirements of Rules 23(a)(3) and 23(a)(4) regarding typicality and adequacy. Movants are also satisfied that the Anwar Plaintiffs' counsel will vigorously pursue all available claims, including claims against auditors and administrators. To further assure the court that the federal securities claims will be pursued assiduously, we have agreed at the request of counsel for the Anwar Plaintiffs to work with them and pay particular attention to the federal securities claims. Consequently, Movants do not foresee a problem in working in conjunction with the Anwar Plaintiffs in order to pursue the best interests of the Class.

In the unlikely event the Court disqualifies the Anwar Plaintiffs, Movants respectfully submit that they stand ready to serve the Class as lead plaintiffs for the federal securities claims.

As the applicant with the next largest losses after the Anwar Plaintiffs, Movants thus would be presumptively the most adequate lead plaintiffs.

## ARGUMENT

There is a strong presumption that the movant with the largest financial interest in the relief sought by the class and that otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure is the "most adequate" lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(iii); *see, e.g.*, *Lipetz v. Wachovia Corp.*, No. 08 Civ 6171, 2008 WL 4615895, at **2-3 (S.D.N.Y. Oct. 10, 2008) (citing *In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 436-37 (S.D.N.Y. 2008)). Movants concede that that the Anwar Plaintiffs possess the largest financial interest of any applicant. Movants also are satisfied that the Anwar Plaintiffs do no suffer any infirmities that would rebut this presumption or prejudice the Class. Movants nevertheless are prepared to serve the Class should the Court find it necessary. After the Anwar Plaintiffs, Movants have suffered the next largest loss – nearly $1.5 million – and do not suffer from any disabling conflicts. Thus, they would be the presumptive lead plaintiff if the Anwar Plaintiffs were disqualified.

The Fairfield Investor Group's arguments attacking Movants are meritless. The Fairfield Investor Group is unable to successfully rebut the presumption that the Movants are the presumptive lead plaintiff should the Anwar Plaintiffs be deemed unsuitable. Instead, in an attempt to divert the Court's attention from the fact that they suffered the least losses of all of the movants, the Fairfield Investor Group invented "requirements" for certifications under the PSLRA that do not exist.

The Fairfield Investor Group makes the flawed argument that Movants somehow failed to provide sufficient information in their certifications.[1] Contrary to the Fairfield Investor Group's imaginary requirements, the PSLRA only requires that "each plaintiff seeking to serve as a representative party on behalf of a class must file with the complaint a sworn certification that makes certain disclosures, including that the plaintiff reviewed the complaint and authorized its filing, the plaintiff did not purchase the securities at the direction of counsel or to participate in a lawsuit, and setting forth all transactions of the plaintiff in the securities during the class period." *In re McDermott Int'l, Inc. Sec. Litig.*, No. 08 Civ. 9943 (DC), 2009 U.S. Dist. LEXIS 21539, at *4 (S.D.N.Y. Mar. 6, 2009) (citing 15 U.S.C. § 78u-4(a)(2)). Both The Knight Services Holdings Limited and the Americas/SwissCo. Trusts complied with the certification requirements imposed by the PSLRA. Indeed, The Knight Services Holdings Limited filed a certificate with its pleading disclosing all of the information required under the PSLRA.

With respect to Americas/SwissCo., Movants have provided more information then is required by the PSLRA. For example, Americas/SwissCo. attached to its application certifications evidencing its ownership, standing, and counsel's authorization to proceed with the litigation. Indeed, the law is unsettled concerning whether a party moving to be lead plaintiff, who did not file a complaint, is even required to submit a certification when moving to be appointed lead plaintiff. In fact, the language of the statute only refers to a certification when a party files a complaint - not when an investor moves to be appointed lead plaintiff. *See* 15 U.S.C. § 78u-4(a)(2)(A) and 15 U.S.C. § 78u-4(a)(3)(i)(II).

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[1] *See Memorandum of Law in Further Support of Motion of the Fairfield Investor Group for Appointment as Lead Plaintiff and Appointment of Lead Counsel and in Opposition to Competing Motions* ("*FIG Br.*") at 7-8.

Moreover, Courts are reluctant to base a lead plaintiff's selection on the adequacy of a certification. *See Bhojwani v. Pistiolis*, No. 06 Civ. 13761 (CM) (KUF), 2007 U.S. Dist. LEXIS 52139, at *27 (S.D.N.Y. June 26, 2007) ("Moreover, since 'it is unsettled whether a candidate for lead plaintiff who has not filed a complaint is even required to submit a certificate,' at this stage of the litigation, the adequacy of the certificate should not be the determinative factor in selecting the lead plaintiff") (quoting *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Labranche & Co., Inc.*, 229 F.R.D. 395, 407 (S.D.N.Y. 2004)). Consequently, in an abundance of caution and in an effort to be wholly transparent, Movants filed certifications.

The Fairfield Investor Group is unable to rebut the argument that they have an inferior loss. Thus, it is unable to supplant Movants as the presumptive lead plaintiff should the Anwar Plaintiffs otherwise not qualify. In a desperate effort to create issues where they otherwise do not exist, the Fairfield Investor Group cites to *Municipal Mortgage & Equity, LLC Sec. and Deriv. Litig.*, No. MDL 08-MD-1961 (D. Md. filed Aug. 15, 2008) ("*MuniMae*"). In *MuniMae*, Wolf Haldenstein Adler Freeman & Herz LLP ("Wolf Haldenstein") represented two investors seeking appointments as lead plaintiffs. Their joint application was denied.

As a threshold matter, we respectfully submit that *MuniMae* was wrongly decided and nevertheless inapposite. In *MuniMae*, the Court found that one of the movants did not provide adequate information concerning the ownership structure of a family investment vehicle that owned the securities of the corporate defendant. The other movant was a money manager that bought the securities for the accounts of its clients. The court was concerned that the money manager did not have explicit, written authority to prosecute the litigation as an attorney in fact on behalf of its clients. Those concerns are not present here.

Both The Knight Services Holdings Limited and Americas/SwissCo. submitted certifications that disclosed all required information. Next, The Knight Services Holdings Limited is not a money manager investing capital on behalf of clients. The Knight Services Holdings Limited is the actual owner of the securities. (*See* Exhibit A to the supplemental declaration of Gregory M. Nespole, dated June 8, 2009 – excerpt of The Knight Services Holdings Limited's Subscription Agreement.) Consequently, Fairfield Investor Group's reliance on *W.R. Huff Asset Mgmt. Co. v. Deloitte & Touche LLP*, 549 F.3d 100 (2d Cir. 2008), is moot because the Knight Services Holdings Limited is the actual holder of the securities.

**CONCLUSION**

For the foregoing reasons, Movants support the Anwar Plaintiffs' motion to be appointed lead plaintiff, as well as their choice of lead counsel. In the alternative, should the Court find infirmities in the Anwar Plaintiffs' application, Movants respectfully request that the Court appoint them lead plaintiffs and their chosen counsel, Wolf Haldenstein, as lead counsel over the federal securities claims.

Dated: June 8, 2009

Respectfully submitted,

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